



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: MRL, Inc.—Request for Reconsideration

File: B-223235.2

Date: July 9, 1986

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### DIGEST

Request for reconsideration of prior decision is denied where factual errors in that decision do not affect conclusion that protest objecting to agency's failure to use sealed bid procedures is untimely where not filed until months after proposals were due.

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### DECISION

MRL, Inc., requests that we reconsider our dismissal of its protest as untimely in MRL, Inc., B-223235, June 13, 1986, 86-1 C.P.D. ¶ \_\_\_\_\_. Although we have concluded that the decision contains factual errors, they do not affect the timeliness of MRL's protest and we therefore deny the request for reconsideration.

In its initial protest, MRL contended that solicitation No. "DLA-400-86-R-4782," issued by the Defense Logistics Agency (DLA), Defense General Supply Center, Richmond, Virginia, was improper since the procurement should have been conducted by sealed bidding rather than by negotiation.

Upon being notified by our Office of MRL's protest, DLA advised us that the procurement whose number most closely approximated that given by MRL was solicitation No. DLA400-86-Q-4782, in which small purchase procedures were used and under which quotations had been received on March 17, 1986, more than 2 months prior to when MRL filed its protest with our Office. We recited these facts in our decision. Since our bid protest procedures require that protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date, we dismissed MRL's protest as untimely. See 4 C.F.R. § 21.2(a)(1) (1986).

On July 1, following receipt of our decision, MRL filed a second protest concerning solicitation No. "DLA-400-86-R-4782" in which it reiterates that the procurement should have been conducted through sealed bidding. The protester maintains that its second protest is timely because the

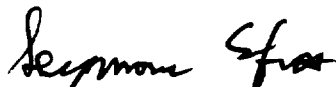
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protester did not know that small purchase procedures were used until receipt of our decision, since the solicitation documents were consistent with a negotiated procurement. MRL contends that the use of small purchase procedures would have been improper since the anticipated dollar value of the procurement far exceeded the applicable threshold.

Although not designated as such, we believe MRL's most recent filing is the equivalent of a request for reconsideration in that it alleges our June 13 decision contained information previously unknown to it which makes its objection to the form of the solicitation timely and, by implication, our prior dismissal inappropriate. It does appear on reexamination that our decision contained factual errors based on the information supplied to us by DLA, but we remain of the opinion that our dismissal was correct and we will not consider MRL's protest on the merits.

MRL attached to its latest submission the cover page and six pages of the schedule from the solicitation it refers to as "DLA400-86-R-4782." That number does seem to appear at the top of the cover page, although the final four digits are somewhat indistinct, having been typed or written over. Near the bottom of that page, however, and at the top of each of the other six pages provided to us by the protester, the solicitation is referred to as No. "DLA400-86-R-1782." In two places on the cover page it is also indicated that the closing date for receipt of proposals was January 15, 1986, a fact which DLA has confirmed.

Now that MRL has provided us with pages from the solicitation to which it objects, it appears its protest is not directed to solicitation No. DLA400-86-Q-4782, a small purchase which closed on March 17, 1986, as we stated in our earlier decision, but to solicitation No. DLA400-86-R-1782, a negotiated procurement which closed on January 15, 1986. The rationale of our original decision is not affected by the correction of these errors. MRL's position is that this procurement should have been conducted by sealed bidding. The fact that it was not was apparent on the face of the solicitation and it therefore was incumbent on MRL, under our bid protest regulations, to file its protest prior to receipt of offers on January 15, 1986. Since its initial protest was not filed with us until May 30, 4-1/2 months later, it was and is untimely and the matter will not be considered on the merits.

*for*   
Harry R. Van Cleve  
General Counsel